IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No.72-DB of 2004

Date of Decision :- November 21, 2006.

Charanjit Singh ....APPELLANT

VERSUS

State of Punjab ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE BALDEV SINGH

Present:- Mr. J.S.Bains, Advocate for the appellant.

Mr. S.S.Randhawa, Senior DAG, Punjab.

MEHTAB S.GILL, J.

This is an appeal against the judgment/order dated 4.9.2003 passed by the learned Addl. Sessions Judge, Fast Track Court, Ludhiana whereby he convicted Charanjit Singh son of Girdhari Lal, under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default to further undergo rigorous imprisonment for two years. The other two accused charged by the learned trial Court i.e. Vasdev son of Girdhari Lal and Kamla Rani w/o Vasdev were acquitted. State has not filed any appeal and their acquittal has attained finality.

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The case of the prosecution is unfolded by the statement Ex.PA of Daljit Singh, given to SI Sadhu Singh on 13.2.1998 at 2.15 p.m. at Safdarjang Hospital, New Delhi. Daljit Singh stated that he is a resident of Dehradun (U.P.). The marriage of his sister Sunita was solemnized with Charanjit Singh resident of Ludhiana about 10 years back. Out of the wedlock, two sons were born. After some time, quarrels erupted between his sister Sunita and her husband. For about 5 years Sunita lived with her brother in his house at Dehradun. When she went to her in-laws' house, they used to turn her out by threatening her and beating her. Sunita out of love for her children, used to go to her in-laws' house, as her children were staying with them. On the night of 3.2.1998, Jeewan Kumar his Masi's (mother's sister) son, informed him on telephone from Ludhiana that Sunita was lying admitted in the Civil Hospital due to burn injuries. Thereupon, Daljit Singh along with his mother Mukhtiar Kaur and sister Varinder Kaur went to Civil Hospital, Ludhiana. They saw the condition of Sunita was critical. No one from the side of her in-laws was present. Due to the serious condition of Sunita, she was removed to Pahwa Hospital, Ludhiana. This was done on their own accord. On 4.2.1998 Sunita still being in critical condition, was taken away to Safdarjang Hospital, New Delhi, without giving any intimation to anybody at Pahwa Hospital, Ludhiana. Sunita was taken to Safdarjang Hospital, New Delhi, as Daljit Singh's wife Anita was working as a Staff Nurse there. On 5.2.1998, Sunita regained consciousness and she told Daljit Singh, his wife Anita, her mother Mukhtiar Kaur and sister Varinder Kaur that after about 8 months of her marriage, her husband Charanjit Singh, her brother-in-law

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Roop Singh, her husband's elder brother Vasdev, wife of husband's elder brother Kamla Rani, were putting pressure on her to bring an amount of Rs. one lac for starting some work for Charanjit Singh. She further stated, that on 3.2.1998 at about 8.30 O' clock in the morning, her husband Charanjit Singh, Jeth and Jethani started quarreling with her and breaking the household articles. In the meantime, her Jethani Kamla Rani caught hold of her from her hair and her husband sprinkled kerosene oil on her from a plastic canny of five litres. Thereafter, she was set ablaze with a match stick. At that time, her Jeth was watching the occurrence while standing inside the room. Due to the burn injuries, she ran outside the house raising an alarm, but fell down on the road outside the house, with her face downwards. Some neighbours came and extinguished the fire by putting a shawl on her. Some one got her admitted in Civil Hospital, Ludhiana in an unconscious condition. On 5.2.1998 ASI Siri Niwas of Police Station Sarojni Nagar, New Delhi recorded the statement of Sunita when she was admited in Safadrjang Hospital, New Delhi. Sunita succumbed to her burn injuries on 12.2.1998 at about 9.30 a.m. On the basis of this statement, FIR Ex.PA/2 was recorded on 14.2.1998 at 12.45 a.m. at Police Station Sadar Ludhiana and the special report reached the Ilaqa Magistrate, Ludhiana on the same day at 12.00 Noon.

The prosecution to prove its case brought into the witness box Daljit Singh as PW1, Mukhtiar Kaur as PW2, ASI Harbans Singh PW3, Jiwan Kumar PW4, Parampal Singh as PW5, HC Devinder Singh as PW6, Constable Major Singh as PW7, ASI Siri Niwas as PW8, HC Jagdish as

PW9, Anita Singh PW10, SI Sadhu Singh as PW11, Dr. Chandar Kant as PW12 and Dr. Rashmi PW13.

Learned counsel for the appellant has argued, that the dying declaration Ex.PW8/C, though allegedly having the right thumb impression of Sunita Ex.PW8/D on it, is not truthful and has been recorded by ASI Siri Niwas PW8, after Sunita was tutored by her parents and brother. In the alleged dying declaration, she has stated that the police came to Daya Nand Medical Hospital first, where she made a wrong statement due to fear of her in-laws. The statement made by deceased Sunita at Dayanand Medical Hospital has not been produced by the prosecution for the sole reason that it was the truthful statement on her behalf. Appellant Charanjit Singh, who had gone to his place of work, is the one who came back immediately and took Sunita to Civil Hospital, Ludhiana. Dr. Rashmi PW13, who had given the fitness certificate, has not attested the dying declaration Ex.PW8/C. In fact no fitness certificate was given and ASI Siri Niwas PW8 just wrote the alleged dying declaration, which was thumb-marked not by Sunita but by someone else. Deceased Sunita was a teacher and it is strange that she did not sign the dying declaration, but put her right thumb impression on it. Brother of the deceased Daljit Singh PW1, is a doctor and his wife Anita Singh PW10 worked in Safdarjang Hospital, New Delhi, where the alleged dying declaration Ex.PW8/C was recorded. If the dying declaration had been recorded, there was no need for Daljit Singh PW1, brother of the deceased, to give statement Ex.PA on 13.2.1998 at 2.15 p.m., on the basis of which FIR Ex.PA/2 was recorded on 14.2.1998at 12.45 a.m. The dying

declaration could have been made the basis of the FIR by the Investigating Officer. In fact the alleged dying declaration had not come into existence at that time when the FIR was recorded. This document was created after the death of Sunita. Babli DW1 has supported the appellant. Appellant in his statement under Section 313 Cr.P.C., has stated that at the time of bursting of the stove and when Sunita got burnt, he was working in his factory, where information reached him that his wife Sunita, while preparing tea on the stove had got burnt. Babli DW1 has corroborated his statement.

Learned counsel for the State has argued that the dying declaration Ex.PW8/C is truthful and has been given at the earliest point of time. Deceased Sunita was first taken to Civil Hospital, Ludhiana. Thereafter, as her condition started worsening, she was shifted to Pahwa Hospital, Ludhiana and on 5.2.1998 she was shifted to Safdarjang Hospital, New Delhi so that she could get the best medical care. Anita Singh PW10, her bhabhi, was working as a Nurse at that time in Safdarjang Hospital, New Delhi and it is natural for the relatives to take the patient to a hospital where they know someone, so that personal care could be given to the patient. Dr. Rashmi PW13 gave the fitness certificate Ex.PW8/B on 5.2.1998 at 11.35 a.m. and it is thereafter ASI Siri Niwas PW8 recorded her dying declaration Ex.PW8/C. A DDR No.8A had also been recorded on 5.2.1998 at 11.30 p.m. in Police Station Sarojni Nagar, New Delhi. Sunita died on 12.2.1998 at 9.30 a.m. and it is thereafter that the statement of Daljit Singh PW1 was recorded and FIR Ex.PA/2 came into existence. There is no delay in lodging of the FIR, as

on 5.2.1998 two documents had come into existence; one is the dying declaration Ex.PW8/C and the other is DDR No.8A, dated 5.2.1998. It is after Dr. Rashmi PW13 gave her opinion Ex.PW8/B that the statement of Sunita was recorded. The motive for commission of the offence has been clearly spelt out by Daljit Singh PW1 brother of the deceased, Mukhtiar Kaur PW2 mother of the deceased and Anita Singh PW10 bhabhi of the deceased.

We have heard the learned counsel for the parties and perused the record with their assistance.

The case of the prosecution hinges on the dying declaration Ex.PW8/C, recorded by ASI Siri Niwas PW8 in Safdarjang Hospital, New Delhi on 5.2.1998. On 5.2.1998 ASI Siri Niwas PW8 moved an application Ex.PW8/A before Dr. Rashmi PW13 that he wanted to record the statement of Sunita. Dr. Rashmi PW13 after declaring her fit as per Ex.PW8/B, ASI Siri Niwas PW8 recorded the dying declaration Ex.PW8/C. Sunita suffered 85% burns. Her hands were also burnt. She did not sign the dying declaration, but put her right thumb impression, as her hands were injured. DDR No. 8A, dated 5.2.1998 was recorded by Constable Sunil Kumar. ASI Siri Niwas PW8 came to know of the admission of Sunita in Safdarjang Hospital, New Delhi on 5.2.1998 at 11.30 a.m. Thereafter, he recorded her statement. He is stated that both of her hands were burnt. Dr. Rashmi PW13 has stated in her testimony before the Court, that she declared Sunita w/o Charanjit Singh fit to make a statement at 11.35 a.m. on 5.2.1998 vide endorsement Ex.PW8/B. As per the record of the hospital, Sunita was admitted in the hospital on

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5.2.1998. Dr. Chandar Kant PW12, who conducted the post mortem examination of Sunita has stated, that she suffered 85% superficial and deep antemortem burns covering the whole body except part of scalp and head, part of both hips, posterior and part of anterior of both thighs, part of right leg, part of left leg anterior including left knee area. From this opinion, it comes out that the hands of deceased Sunita were also burnt. He (PW12) has further stated, that the skin was peeling off from all the places. On 5.2.1998, the patient travelled in a fully conscious state. It is clear from the statement of these witnesses that the dying declaration Ex.PW8/C was recorded after taking the opinion from the doctor and what was stated by Sunita, was stated in a fully conscious frame of mind. Sunita died on 12.2.1998 at 9.30 a.m. in Safdarjang Hospital. Though the FIR Ex.PA/2 came into existence on 14.2.1998 at 12.45 a.m., but we cannot overlook this fact that DDR No. 8A, was recorded on 5.2.1998 by Constable Sunil Kumar in Police Station Sarojni Nagar, New Delhi. We also cannot look over this fact that ASI Siri Niwas PW8 was posted at Police Station Safdarjang, New Delhi. He did not have any ill-will towards the appellant nor he was friendly with the complainant party so that he would falsely implicate the appellant. The other prosecution witnesses i.e. Daljit Singh PW1 brother of the deceased, Mukhtiar Kaur PW2 mother of the deceased and Anita Singh PW10 bhabhi of the deceased, have supported the case of the prosecution. They stated in unison that the demand of Rs. one lac was being made which they were not in a position to pay. Sunita was mal-treated by her in-laws and she had

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lived with her brother for five years. She went to her in-laws' house because her children were staying with them.

We do not find any infirmity in the judgment of the learned trial Court.

Dismissed.

(MEHTAB S.GILL)
JUDGE

(BALDEV SINGH)
JUDGE

November 21, 2006
SKA